Supreme Court, U.S.
FILED
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

Merle Richard Schmidt

Petitioner

vs

Thomas Buchanan

Respondent

On Petition for Common Law Writ of Certiorari
To The Supreme Court of Iowa

Appendix

Merle Richard Schmidt
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IN THE SUPREME COURT OF IOWA
No. 05-0655
Iowa County No. LACV022129
ORDER

MERLE RICHARD SCHMIDT,
Plaintiff - Appellant,

vs.

THOMAS BUCHANAN,
Defendant - Appellee

FILED
FEB. 28 2006
CLERK
SUPREME COURT

After consideration by this court, further review of the above captioned case is denied.

Dated this 28th day of February, 2006.

THE SUPREME COURT OF IOWA
By s/Louis A. Lavorato
Louis A. Lavorato, Chief Justice

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IN THE

SUPREME COURT OF IOWA

CASE NO. 05-0655

IOWA COURT OF APPEALS

CASE NO. 05-896

Merle Richard Schmidt,
Plaintiff-Appellant

vs.

THOMAS BUCHANAN
Defendant-Appellee

APPLICATION FOR FURTHER REVIEW
OF THE IOWA COURT OF APPEALS
OPINION FILED DECEMBER 21, 2005

Considered by Huitink, P.J., and Mahan and Hecht, J.J.

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CERTIFICATE OF SERVICE

I certify that on the 6th day of January, 2006, I served two (2) copies of this document by either mailing or hand delivering said copies to the following counsel of record:

JULIE A. BURGER
Assistant Attorney General
Hoover State Office Building
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CERTIFICATE OF FILING

I further certify that on the 6th day of January, 2006, I will file this document by mailing or hand delivering eighteen (18) copies of same to the Clerk of Supreme Court at 1111 E. Court Ave., Des Moines, Iowa 50319.

s/ Merle Richard Schmidt

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IN THE IOWA DISTRICT COURT FOR IOWA COUNTY

MERLE RICHARD SCHMIDT Plaintiff,	)	No. CVCV021962
vs.	)	
MAGISTRATE THOMAS BUCHANAN Defendant.	)	**ORDER**

This file came to me for hearing on the plaintiff's petition for writ of certiorari pursuant to prior assignment. The plaintiff appeared personally and with counsel Brian Earley. The defendant appeared personally and with counsel Tim McMeen.

Plaintiff stipulated that the factual basis for these proceedings are as set forth in Magistrate Buchanan's certification filed April 20, 2004. I then heard statements and arguments of counsel. After review, I enter the following ruling.

FINDING OF FACT

On March 2, 2004, the Merle Schmidt appeared in open court before Magistrate Buchanan for purpose of an arraignment on a charge of driving under suspension. Deputy Clerk Phyllis Rodenberry (sic), Assistant County Attorney Tim McMeen, Department of Correctional Services officer Dale Slaymaker, and two members of the public were present in the courtroom.

Magistrate Buchanan asked Mr. Schmidt if he wished to plead guilty or not guilty. Mr. Schmidt replied he was a victim of a conspiracy. Magistrate Buchanan asked Mr. Schmidt on several occasions if he wanted to plead guilty or

not guilty, receiving the same response. Magistrate Buchanan then asked Mr. Schmidt who was involved in the conspiracy. Mr. Schmidt responded the Clerk of Court Sheryl Neal, the sheriff James Slockett, and Magistrate Buchanan were involved in the conspiracy. Magistrate Buchanan was acting in the discharge of his official duties at the time Mr Schmidt made that statement. Mr. Schmidt made the statement in the immediate view and presence of Magistrate Buchanan.

Magistrate Buchanan considered Mr. Schmidt's statement to be contemptuous and insolent, impugning his fairness. Magistrate Buchanan immediately found Mr. Schmidt in contempt and sentenced him to seven days in jail. Mr. Schmidt filed the petition for writ of certiorari alleging, in essence, that Magistrate Buchanan exceeded his jurisdiction or otherwise acted illegally when finding Mr. Schmidt in contempt.

CONCLUSION OF LAW

Certiorari is an action at law to test whether a tribunal-in this case, the magistrate court-has exceeded its jurisdiction or otherwise acted illegally. French v. Iowa Dist. Ct., 546 N.W. 2d 911, 913 (Iowa 1996). Only the district court acting through a district judge may grant the writ directed at a judicial magistrate. Iowa R.Civ.P. 1.1404. The plaintiff has the burden to show the defendant has exceeded his proper jurisdiction or otherwise acted illegally. Gibb v. Hanson, 286 N.W. 2d 180, 184 (Iowa 1979).

Conduct that is contemptuous or insolent behavior toward a court while engaged in the discharge of its judicial duties which may tend to impair the respect due to its authority is punishable as contempt. Iowa Code §665.2(1)(2003). Contempts may be indirect (constructive) or direct. An indirect contempt is an act not committed in the presence of a court which tends to degrade the court or

obstruct, interrupt, prevent, or embarrass the administration of justice. A direct contempt consists of words spoken or acts committed in the presence of the court, which tent (sic) to have the same effect. Lutz v. Darbyshire, 297 N.W. 2d 349, 353 (Iowa 1980).

No person may be punished for contempt unless the alleged contumacious actions have been established by proof beyond a reasonable doubt. Amro v. Iowa Dist. Ct., 429 N.W. 2d 135, 140 (Iowa 1988). Contempt is established by proof of conduct "that is intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, or contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemner has the right or not." Medina v. Iowa District Court for Woodbury County, 552 N.W.2d 140, 141 (Iowa 1996). The contempt power "is indispensable to the protection of due and orderly administration of justice and in maintaining the authority and dignity of the court. 'But its exercise is a delicate one, and care is needed to avoid arbitrary or oppressive conclusions.'" Gibb, 286 N.W.2d at 184, quoting Knox v. Municipal Court 185 N.W.2d 705, 707 (Iowa 1971). Since contempt proceedings are quasi-criminal in nature and courts are to carefully exercise its contempt power, the statute proscribing contemptuous conduct is to be construed rather strictly. Hicks v. Stigler, 323 N.W.2d 262, 263 (Iowa Ct. App. 1982).

The facts before me are not in dispute. In response to a question posed by Magistrate Buchanan, Mr. Schmidt accused the magistrate of being involved in a conspiracy against Mr. Schmidt. The issue before me is whether this conduct constitutes a contempt.

Mr. Schmidt argues that it does not. He argues that he was only answering the magistrates question based upon his honest opinion. He further maintains that if the magistrate did not want to hear his answer, the magistrate should not

have asked the question. He was, he says, exercising his first amendment right of free speech. Further, he postulates, that had he refused to answer the question, the magistrate may have viewed that as contemptuous conduct as well. Finally, Mr. Schmidt points to the fact that he gave his answer in a normal tone, without raising his voice or otherwise disrupting the court proceedings.

The State argues that Mr. Schmidt's statement made in open court in the presence of others has the inevitable affect of impairing the respect due the court. Mr. Schmidt could have, rather, simply declined to answer the magistrate's question and avoided presenting his conspiracy theory in a courtroom attended by members of the public as well as court officials. Once he chose to answer the question, though, and in so doing implicated the magistrate in a conspiracy, his conduct became contemptuous and insolent behavior toward the court.

After review, I conclude that Mr. Schmidt's statement to Magistrate Buchanan does not constitute a contempt as contemplated by Iowa Code §665.2. I have reached this conclusion for two reasons. First, Mr. Schmidt's statement was in direct response to the magistrate's question as to who was involved in the conspiracy. This argues against the conclusion that Mr. Schmidt's conduct was intentional and deliberate with a bad or evil purpose. Mr. Schmidt did not volunteer or announce any unsolicited information about his belief that the magistrate was involved in a conspiracy. If anything, he was being respectful of the authority of the court in responding to the direct inquiry Magistrate Buchanan made of him.

Secondly, Mr. Smith's (sic) remark was not made in an insolent manner. It is not disputed that Mr. Smith (sic) answered Magistrate Buchanan's question in a normal tone of voice with, apparently, no accompanying gestures or